

**RESOLUTION NO. 74959**

**A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN JOSÉ AUTHORIZING THE DIRECTOR OF  
HOUSING TO NEGOTIATE AND EXECUTE AN  
INTERIM AFFORDABILITY RESTRICTION WITH  
TIERRA ENCANTADA DEVELOPMENT, LLC FOR  
THE TEMPORARY RENTAL OF THE FOR-SALE  
AFFORDABLE UNITS AT TIERRA ENCANTADA  
TOWNHOMES**

**WHEREAS**, in 2008, the for-sale Tierra Encantada Townhomes, located near the corner of Alum Rock and McCreery Avenue, ("Project") were completed, and on June 17, 2008, the Council of the City of San José ("City") approved an additional \$200,000 to be used, along with the \$400,000 acquisition loan that was rolled over into second mortgage loans, to fund second mortgage commitments of up to \$50,000 per unit; and

**WHEREAS**, in March, 2008, Community Housing Developers ("CHD") began marketing the Project for-sale units, but have not been able to attract buyers; and

**WHEREAS**, the Housing Department is proposing that the eight (8) of the twelve (12) for-sale units, that are currently restricted to moderate income households, be approved for rental with one (1) unit available for rent to a household at 50% of Area Median Income ("AMI"), three (3) units available for rent to households at 60% of AMI, and four (4) units available for rent to households at 80% of AMI; and

**WHEREAS**, the proposed Interim Affordability Restriction ("Restriction") would also contain provisions to allow the eight affordable units to be rented for a period of up to five (5) years, the Director of Housing will have the authority to extend the rental term for up to an additional five (5) years, with the underlying 45-year for-sale restriction would take effect upon the expiration or termination of the Restriction; CHD may terminate the Restriction at any time during the term, provided that they give a minimum

90 days' advance notice to the tenants prior to the commencement of the marketing of those units for sale and does not violate or prematurely terminate any lease agreement between the owner and tenant of an occupied designated affordable unit; and that CHD agrees to take any actions necessary to legally avoid legal relocation obligations, but if there are resulting obligations, CHD shall be responsible for them and the City will not bear any cost or responsibility for relocation; and

**WHEREAS**, the City desires to authorize the Director of Housing to negotiate and execute an Interim Affordability Restriction with Tierra Encantada, LLC to allow for the temporary rental of the for-sale units at the Project;

**NOW, THEREFORE**, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ THAT:

The Director of Housing is hereby authorized to negotiate and execute an Interim Affordability Restriction with Tierra Encantada Development, LLC, to allow for the temporary rental of the for-sale affordable units at Tierra Encantada Townhomes, as more specifically set forth in the Director of Housing's report dated May 21, 2009.

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ADOPTED this 16th day of June, 2009, by the following vote:

AYES: CAMPOS, CHIRCO, CHU, CONSTANT, HERRERA,  
KALRA, LICCARDO, OLIVERIO, PYLE; REED.

NOES: NONE.

ABSENT: NGUYEN.

DISQUALIFIED: NONE.

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CHUCK REED  
Mayor

ATTEST:

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LEE PRICE, MMC  
City Clerk